

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

PETER MILLER, CLIFFORD HOYT, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.

Plaintiffs,

V.

PATRICK TREDO and CHEMIMAGE CORP.

Defendants.

Case No. 05-10367 RWZ

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO UNSEAL ALL  
PRESENTLY SEALED AND REQUESTED-TO-BE-SEALED DOCUMENTS**

Defendants Patrick Treado (“Treado”) and ChemImage Corp. (“ChemImage”) respectfully request that the Court stay any action on Plaintiffs’ Motion To Unseal All Presently Sealed And Requested-To-Be Sealed Documents, because:

1. The papers requested to be unsealed all pertain to motions that the Court has already decided, or that have been stayed; and
2. Going forward, the case will be limited to the issue of inventorship of the sole patent-in-suit, which does not raise the issue of confidentiality implicated in the sealed or requested-to-be-sealed papers.

If, after the issue of inventorship has been decided, it becomes necessary to address the stayed motions, Treado and ChemImage will review the sealed and requested-to-be-sealed papers with a view towards unsealing as many as possible, and the Court can then address any

remaining impoundment disputes. Treado and ChemImage respectfully submit that this is the most efficient and least burdensome approach to this issue at this time.

**A. The Papers Requested To Be Unsealed All Pertain To Motions That The Court Has Already Decided, Or That Have Been Stayed:**

As detailed in Plaintiffs' motion, the papers that Plaintiffs seek to have unsealed all pertain to three motions filed by Plaintiffs: their motion for leave to amend the complaint (Docket No. 40); their motion to consolidate this case with their recently-filed second case (Docket No. 77); and their motion to compel production of documents (Docket No. 50). See Plaintiffs' Motion To Unseal, Ex. 1. As the Court noted in its Order dated September 29, 2006 (Docket No. 83), however, the parties have stipulated that the motion for leave to amend and the motion to consolidate are both stayed pending resolution of the inventorship claim presented in Plaintiffs' pending complaint. In that same Order, the Court decided the motion to compel (allowing it in part and denying it in part). Accordingly, there is no pending issue or motion for the Court to decide that implicates any sealed or requested-to-be-sealed document(s).

**B. Going Forward, The Case Will Be Limited To The Issue Of Inventorship Of The Sole Patent-In-Suit, Which Does Not Raise The Issue Of Confidentiality Implicated In The Sealed Or Requested-To-Be-Sealed Papers:**

The issue that will be addressed in this case going forward is the inventorship claim alleged in Count I of Plaintiffs' original (unsealed) complaint. That claim does not raise any issue of confidentiality and impoundment. Neither Plaintiffs nor Defendants have sought impoundment of any papers pertaining solely to that claim.

The issue of confidentiality pertains instead to a separate aspect of the prior relationship between plaintiff Cambridge Research and Instrumentation, Inc. ("CRI") and ChemImage – an aspect that CRI did not raise until it sought leave to amend its complaint 16 months after filing its original complaint. CRI had expressly agreed (with the advice of its present litigation

counsel) to keep that separate aspect of CRI's and ChemImage's relationship confidential. Now, in violation of that agreement, Plaintiffs seek to have papers relating to that aspect of the prior relationship unsealed, on the basis that continued compliance with the agreement would be "tedious." See Plaintiffs' Memorandum In Support Of Motion To Unseal, Ex. 2. Plaintiffs' true motive is transparent – they seek to have the papers unsealed in order to gain leverage in competing with ChemImage. The confidential nature of the document at issue provides ChemImage with a commercial advantage, because CRI's customers do not know (and CRI is contractually precluded from informing its customers) of the subject matter of the document. Through its motion to unseal, CRI is seeking to get around the contractual confidentiality terms to which it agreed, so that CRI can disclose the substance of the document to its customers and thereby enhance its commercial position with respect to ChemImage in the marketplace.

As noted above, if, after the issue of inventorship has been decided, it becomes necessary to address the stayed motions, Treado and ChemImage will review the sealed and requested-to-be-sealed papers with a view towards unsealing as many as possible, and the Court can then address any remaining impoundment disputes.

In view of the foregoing, Treado and ChemImage respectfully submit that the most efficient and least burdensome approach to Plaintiffs' Motion To Unseal All Presently Sealed And Requested-To-Be Sealed Documents is to stay the motion until the issue of inventorship has first been resolved.

Respectfully submitted,

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick (BBO # 564324)  
Christopher S. Kroon (BBO # 660286)  
Duane Morris LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210  
Telephone: 617.289.9220  
Fax: 617.289.9201  
e-mail: [ajfitzpatrick@duanemorris.com](mailto:ajfitzpatrick@duanemorris.com)

Paul D. Weller (admitted *pro hac vice*)  
Kenneth L. Racowski (admitted *pro hac vice*)  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103  
Telephone: 215.963.5530  
eFax: 215.963.5001  
e-mail: [pweller@morganlewis.com](mailto:pweller@morganlewis.com)

October 4, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on October 4, 2006.

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick